

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

60824

FILE: B-185073

DATE: April 30, 1976

98998

MATTER OF: Charles Capone Construction Company, Inc.

## DIGEST:

Complaint against contract awarded by recipient of Federal grant will not be considered since matter has been the subject of litigation.

Charles Capone Construction Company (Capone), Inc., has lodged a complaint against the award of a contract for highway work to Wes Construction Corp. (Wes) by the Department of Public Works, Commonwealth of Massachusetts. The award was financed, in significant part, by a Federal grant made by the Federal Highway Administration, U.S. Department of Transportation. Capone insists that Wes' bid for the work should have been considered nonresponsive for failing to evidence a required commitment to the affirmative action provisions (involving equal employment opportunity) of the bidding documents under which the questioned award was made.

In addition to requesting our review, Capone sought judicial relief in the Superior Court, Commonwealth of Massachusetts. Capone's complaint in the Superior Court raised the same issue (that is, the alleged nonresponsiveness of Wes' bid) which it raises in its complaint filed with our Office. By order dated September 24, 1975, the Superior Court denied Capone's requests for appropriate injunctive relief in the case.

It has been our general policy not to decide issues which are, or have been, the subject of litigation before a court of competent jurisdiction. See, Grumman Ecosystems Corporation, B-184617, October 24, 1975, 75-2 CPD 252. Since the question of the alleged nonresponsiveness of Wes' bid was the subject of litigation, we will take no action on Capone's complaint.

*Paul G. Dembling*  
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General Counsel